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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/977,629	10/15/2001	William R. Brown	00216-551001 / OB-199	2551
26161	7590	04/22/2005	EXAMINER	
FISH & RICHARDSON PC 225 FRANKLIN ST BOSTON, MA 02110			WALSH, JOHN B	
			ART UNIT	PAPER NUMBER
			2151	

DATE MAILED: 04/22/2005

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.

09/977,629

Applicant(s)

BROWN ET AL.

Examiner

John B. Walsh

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 03 January 2005.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1,4-17,21,24-39 and 48 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1,4-17,21,24-39 and 48 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
- ☐ Certified copies of the priority documents have been received.
 - ☐ Certified copies of the priority documents have been received in Application No. _____.
 - ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|-----------------------------------------------------------------------------------------|-----------------------------------------------------------------------------|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413) |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | Paper No(s)/Mail Date. _____ |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08) | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152) |
| Paper No(s)/Mail Date _____ | 6) <input type="checkbox"/> Other: _____ |

DETAILED ACTION

Claim Rejections - 35 USC § 103

1. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

2. Claims 1, 4-17, 21, 24-39 and 48 are rejected under 35 U.S.C. 103(a) as being unpatentable over U.S. Patent No. 6,311,369 to Ryu in view of U.S. Patent No. 5,497,789 to Zook.

Ryu '369 discloses a handle (1) and grip (3) of a personal care product (tool).

Ryu '369 fails to disclose the grip comprising an elastomeric core, wherein the elastomeric core is a thermoplastic elastomer and a sheath surrounding the core, the sheath having a hardness greater than the core.

Zook '789 teaches a thermoplastic material (4; abstract, line 3) core and a sheath (2) surrounding the core, the sheath having a hardness greater than the core (core is a gel which is softer than the sheath).

It would have been obvious to one having ordinary skill in the art at the time the invention was made to provide the handle of Ryu '369 with the core and sheath of Zook '789 in order to provide improved cushioning to a user that is more durable and provides superior pressure-dissipating characteristics.

As concerns claim 4, it would have been obvious to one having ordinary skill in the art at the time the invention was made to provide any of the selected materials, since it has been held

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to be within the general skill of a worker in the art to select a known material on the basis of its suitability for the intended use as a matter of obvious design choice. In re Leshin, 125 USPQ 416.

As concerns claim 5-7, 14-16, 25-27 and 34-36, it would have been obvious to one having ordinary skill in the art at the time the invention was made to provide a shore hardness of less than 50, 25, 20 and 10A for a core and 25-80, 30-60 and 4-55A for a sheath since it has been held that discovering an optimum value as a result of effective variable involves only routine skill in the art. In re Boesch, 617 F.2d 272, 205 USPQ 215 (CCPA 1980). The core and sheath of Zook '789 inherently has a hardness that can be measured and expressed as a shore hardness and the specific value is seen as an obvious design choice.

As concerns claims 8-10 and 28-30, it would have been obvious to one having ordinary skill in the art at the time the invention was made to provide the selected materials, since it has been held to be within the general skill of a worker in the art to select a known material on the basis of its suitability for the intended use as a matter of obvious design choice. In re Leshin, 125 USPQ 416.

As concerns claims 11-13 and 31-33, it would have been obvious to one having ordinary skill in the art at the time the invention was made to provide the claimed ranges, since it has been held that where the general conditions of a claim are disclosed in the prior art, discovering the optimum or workable ranges involves only routine skill in the art. In re Aller, 105 USPQ 233.

As concerns claim 17, the claim is drawn to the method not the apparatus of a razor or toothbrush, wherein Ryu'369 as modified is capable of being used on a toothbrush or razor.

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As concerns claims 37-39, the claim is drawn to a personal care product not a toothbrush, razor or hairbrush, wherein Ryu '369 as modified is capable of being used on a toothbrush, razor or hairbrush.

3. Claims 1, 4-17, 21, 24-39 and 48 are rejected under 35 U.S.C. 103(a) as being unpatentable over U.S. Patent No. 6,311,369 to Ryu in view of U.S. Patent No. 5,203,607 to Landi.

Ryu '369 discloses a handle (1) and grip (3) of a personal care product (tool).

Ryu '369 fails to disclose the grip comprising an elastomeric core, wherein the elastomeric core is a thermoplastic elastomer and a sheath surrounding the core, the sheath having a hardness greater than the core.

Landi '607 teaches a thermoplastic material (column 2, line 31) core and a sheath (column 3, lines 49-50) surrounding the core, the sheath having a hardness greater than the core (core is a gel which is softer than the sheath).

It would have been obvious to one having ordinary skill in the art at the time the invention was made to provide the handle of Ryu '369 with the core and sheath of Landi '607 in order to provide improved cushioning to a user that is more durable and provides superior pressure-dissipating characteristics.

As concerns claim 4, it would have been obvious to one having ordinary skill in the art at the time the invention was made to provide any of the selected materials, since it has been held to be within the general skill of a worker in the art to select a known material on the basis of its

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suitability for the intended use as a matter of obvious design choice. In re Leshin, 125 USPQ 416.

As concerns claim 5-7, 14-16, 25-27 and 34-36, it would have been obvious to one having ordinary skill in the art at the time the invention was made to provide a shore hardness of less than 50, 25, 20 and 10A for a core and 25-80, 30-60 and 4-55A for a sheath since it has been held that discovering an optimum value as a result of effective variable involves only routine skill in the art. In re Boesch, 617 F.2d 272, 205 USPQ 215 (CCPA 1980). The core and sheath of Zook '789 inherently has a hardness that can be measured and expressed as a shore hardness and the specific value is seen as an obvious design choice.

As concerns claims 8-10 and 28-30, it would have been obvious to one having ordinary skill in the art at the time the invention was made to provide the selected materials, since it has been held to be within the general skill of a worker in the art to select a known material on the basis of its suitability for the intended use as a matter of obvious design choice. In re Leshin, 125 USPQ 416.

As concerns claims 11-13 and 31-33, it would have been obvious to one having ordinary skill in the art at the time the invention was made to provide the claimed ranges, since it has been held that where the general conditions of a claim are disclosed in the prior art, discovering the optimum or workable ranges involves only routine skill in the art. In re Aller, 105 USPQ 233.

As concerns claim 17, the claim is drawn to the method not the apparatus of a razor or toothbrush, wherein Ryu'369 as modified is capable of being used on a toothbrush or razor.

As concerns claims 37-39, the claim is drawn to a personal care product not a toothbrush, razor or hairbrush, wherein Ryu'369 as modified is capable of being used on a toothbrush, razor or hairbrush.

Response to Arguments

4. Applicant's arguments with respect to the claims have been considered but are moot in view of the new ground(s) of rejection.

Conclusion

5. Applicant's amendment necessitated the new ground(s) of rejection presented in this Office action. Accordingly, **THIS ACTION IS MADE FINAL**. See MPEP § 706.07(a). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire **THREE MONTHS** from the mailing date of this action. In the event a first reply is filed within **TWO MONTHS** of the mailing date of this final action and the advisory action is not mailed until after the end of the **THREE-MONTH** shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than **SIX MONTHS** from the date of this final action.

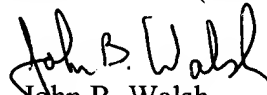
6. The prior art made of record and not relied upon is considered pertinent to applicant's disclosure.

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7. Any inquiry concerning this communication or earlier communications from the examiner should be directed to John B. Walsh whose telephone number is 571-272-7063. The examiner can normally be reached on Monday-Thursday from 6:30-5:00.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Zarni Maung can be reached on 571-272-3939. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).


John B. Walsh
Primary Examiner
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